

U.S. Application No. 10/774,028, filed February 6, 2004
Attorney Docket No. 14329US02
Response AF dated December 16, 2008 to provoke Advisory Action
In Response to Office Action Made Final mailed October 16, 2008

REMARKS

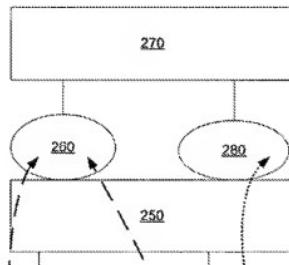
Claims 1-32 are pending. Claims 1-32 stand rejected.

Claims 1-10, 12-20 and 25 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,687,758 B2 to Peter K. Craft et al. ("Craft") in view of U.S. Patent No. 6,941,377 B1 to Nimrod Diamant et al. ("Diamant"). Applicants respectfully traverse the rejection for at least the reasons as set forth below.

Claim 1 recites "**a transport layer/network layer processing stack; and an intermediate driver coupled to the transport layer/network layer processing stack via a first miniport and a second miniport**, wherein the first miniport supports teaming, and wherein the second miniport is dedicated to a system that can offload traffic from the transport layer/network layer processing stack".

It is respectfully noted for the Examiner that the intermediate driver is coupled to the transport layer/network layer processing stack *via* the first miniport and the second miniport.

For illustration, but in no way limiting the scope of any claim, the Examiner is encouraged to review FIG. 3 of the present application which shows an embodiment of the present invention. Note that intermediate driver 250 is coupled to TCP/IP stack 270 *via* miniport instance 260 and miniport instance 280. The following is a clip from FIG. 3 of the present application:



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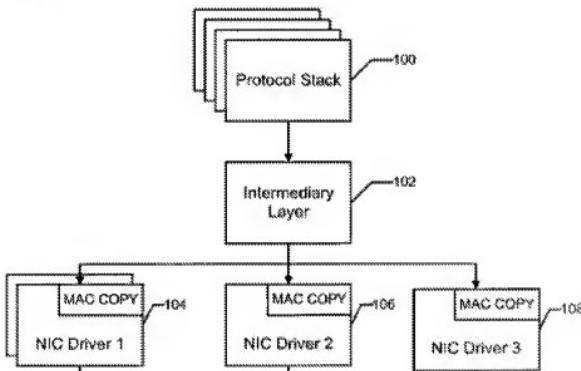
Note that the intermediate driver 250 is coupled to TCP/IP stack 270 *via* miniport instances 260, 280.

On page 11 of the Office Action Made Final, the Examiner admits that Craft does not teach a second miniport as set forth in claim 1.

However, the Examiner alleges that “Diamant discloses this (Figure 1 of Diamant discloses an intermediary layer, read to be the intermediate driver, connected to multiple NIC drivers. Which are then seen to be instances of a second miniport)”. Office Action Made Final at page 11.

For discussion, a clip of FIG. 1 of Diamant follows:

FIG. 1



The attention of the Examiner is respectfully drawn to FIG. 1 of Diamant (reproduced above in relevant part). Note that the multiple NIC drivers 104-108 are on the *wrong side* of intermediary layer 102. In other words, the intermediary layer 102 is *not* coupled to protocol stack 100 (pictured as above intermediate layer 102) *via* multiple NIC drivers 104-108 (pictured as below intermediate

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layer 102).

For comparison, again, look at FIG. 3 of the present application, which is reproduced on page 8 above and which illustrates an embodiment of the present invention. Note that, in FIG. 3 of the present application, intermediate driver 250 is coupled to TCP/IP stack 270 *via* miniport instance 260 and miniport instance 280.

Note that, in FIG. 1 of Diamant, the intermediary layer 102 is *not* coupled to protocol stack 100 *via* multiple NIC drivers 104-108 as alleged in the Office Action Made Final at page 11.

Accordingly, Diamant does not make up for the admitted teaching deficiencies of Craft.

For at least the above reasons, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to independent claim 1 and its rejected dependent claims (i.e., claims 2-10 and 12-20).

Similar arguments as set forth above with respect to claim 1 can also be applied, if applicable, to claim 25.

For at least the above reasons, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to claim 25.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being obvious over Craft in view of Diamant, and still further in view of a document entitled “Winsock Direct and Protocol Offload on SANs” to Microsoft Corporation (“Microsoft”). Applicants respectfully traverse the rejection for at least the reasons as set forth below.

In view of at least the deficiencies in the Examiner’s *prima facie* case of obviousness based on Craft in view of Diamant, as alleged, with respect to claim 1, the Examiner has similarly failed to present a *prima facie* case of obviousness based on the combination of Craft, Diamant and Microsoft, as alleged, with respect to claim 11.

It is therefore respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to claim 11.

Claims 21-24 and 26-32 stand rejected under 35 U.S.C. § 103(a) as being obvious over

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Craft. Applicants respectfully traverse the rejection for at least the reasons as set forth below.

Claim 21 recites “a first set of network interface cards comprising a second set and a third set, the second set comprising a network interface card that is capable of offloading one or more connections, **the third set comprising one or more network interface cards that are not capable of providing an offload path**”.

It is alleged on page 3 of the Office Action Made Final that Craft at col. 1, lines 30-33 teaches “**the third set comprising one or more network interface cards that are not capable of providing an offload path**”. However, Craft at col. 1, lines 30-33 only relates to intelligent network interface cards (INICs). *All the INICs in Craft appear to be capable of providing an offload path*. Perhaps, a particular INIC may be used to provide an upload path, however, it is still capable of providing an offload path. The circuitry inside the INICs in, for example, FIG. 1 of Craft appear to show that each INIC is capable of providing an offload path. Thus, the INICs of Craft at col. 1, lines 30-33 do not meet the requirement that they are not capable of providing an offload path. Accordingly, Craft at col. 1, lines 30-33 does not teach “**the third set comprising one or more network interface cards that are not capable of providing an offload path**”.

Claim 21 also recites “iWARP traffic”. “iWARP” is mentioned nowhere in Craft. If Craft does not mention iWARP, then Craft cannot teach iWARP.

The Examiner states, without any documentary evidence, that iWARP traffic is obvious in view of Craft. Applicants respectfully disagree. The Examiner is clearly eluding to allegedly well-known information that is not available in Craft.

Under Final Rejection, it is now inappropriate to allege, without any documentary evidence, that technical facts are well known. See, e.g., M.P.E.P. § 2143.03 (“Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113.”)

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Furthermore, “assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.” M.P.E.P. § 2143.03. Clearly, here, the Examiner would have to make assertions of technical facts in the areas of esoteric technology, which would be inappropriate under these circumstances and under Final Rejection. Lastly, M.P.E.P. § 2143.03 states that the Examiner must cite not merely a reference work, but a reference work that is recognized as a standard in the pertinent art.

The Examiner is respectfully requested to provide a reference work that is recognized as a standard in the pertinent art as set forth in M.P.E.P. § 2143.03.

For at least the above reasons, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to independent claim 21 and its rejected dependent claims (i.e., claims 22-24).

Claim 26 recites RDMA traffic. RDMA is mentioned nowhere in Craft. If Craft does not mention RDMA, then Craft cannot teach RDMA.

It is not clear whether the Examiner is merely making a naked statement of what is obvious. It is assumed that the Examiner has merely confused between direct memory access and RDMA. However, the Examiner is reminded that, under Final Rejection, it is now inappropriate to allege, without any documentary evidence, that technical facts are well known. See, e.g., M.P.E.P. § 2143.03 (“Official notice without documentary evidence to support an examiner’s conclusion is permissible only in some circumstances. While “official notice” may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113.”)

Furthermore, “assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.” M.P.E.P. § 2143.03. Clearly, here, the Examiner would have to make assertions of technical facts in the areas of esoteric technology, which would

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be inappropriate under these circumstances and under Final Rejection. Lastly, M.P.E.P. § 2143.03 states that the Examiner must cite not merely a reference work, but a reference work that is recognized as a standard in the pertinent art.

The Examiner is respectfully requested to provide a reference work that is recognized as a standard in the pertinent art as set forth in M.P.E.P. § 2143.03.

For at least the above reasons, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to independent claim 26 and its rejected dependent claim (i.e., claim 27).

Claim 28 recites “providing layer 2 load balancing over the plurality of network interface cards and the additional network interface card”. Craft does not teach “*layer 2* load balancing” and, in particular, “layer 2 load balancing over the plurality of network interface cards and the additional network interface card”.

For at least the above reasons, it is respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to independent claim 28 and its rejected dependent claim (i.e., claims 29-32).

Applicants do not necessarily agree or disagree with the Examiner’s characterization of the documents made of record, either alone or in combination, or the Examiner’s characterization of recited claim elements. Furthermore, Applicants respectfully reserve the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

With respect to the present application, Applicants hereby rescind any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

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In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: December 16, 2008

Respectfully submitted,

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